CF0000060619

(2)

Division Bench (Jabalpur)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR.

Cr.A. 1611 /96

APPELLANTS : 1. Mohit Ram Kanwar son of Kenda Ram Kanwar, aged about 29 years, cultivator

2. Namo Narayan Gond, son of Dhoop Say Gond, aged about 36 years, Carpenter

Both residents of village Bela, Police Station BALCO, District Bilaspur.

-Versus-

RESPONDENT : The State of M.P.

CRIMINAL APPEAL UNDER SECTION 374(2) CRIMINAL PROCEDURE CODE.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Coram: Hon'ble Shri Dhirendra Mishra &
Hon'ble Shri Dilip Raosaheb Deshmukh, JJ.

Criminal Appeal No.1611/96

Mohit Ram Kanwar and another

Vs.

The State of M.P. (now State of Chhattisgarh)

Smt. Ranjana Jaiswal, learned counsel for the appellants.
Shri Akhil Mishra, learned Panel Lawyer for the State.

J U D G M E N T

(Delivered on 14-07-2006)

Per Dhirendra Mishra, J.

The appellants have preferred this appeal under Section 374(2) of the Criminal Procedure Code as they have been convicted under Section 302 and 201 I.P.C. by learned 1st Additional Sessions Judge, Bilaspur in Sessions Case No.17/1994 vide his judgment dated 31st August 1996 and sentenced to undergo life imprisonment and imprisonment for one year and fine of Rs.200/- and Rs.100/- each on each count and in default to undergo additional rigorous imprisonment for one month.

2. Case of the prosecution, in brief, is that Shiv Prasad Shukla P.W.9 gave missing information at the Police Station Balco informing that on 18.12.1991 at about 2.30 P.M his son Subhash Chandra Shukla had gone to Korba to purchase lottery ticket by bicycle. However, he has not returned since then. His younger son Girish Chandra Shukla had enquired from the lottery center where he was informed that Subhash Chandra did not come there. Thereafter both the father and brother of the deceased were making enquiries. He also mentioned

that the height of Subhash Chandra was 5 feet 6" and worn black pant, discoloured shirt, white shoes and socks and was capable of speaking Hindi. He was carrying Rs.1100/-. Thereafter, statement of Mangal Singh P.W.5 and Patiram P.W.6 was recorded on 30th October 1993. Memorandum statement of appellant Mohit Ram was recorded on 3.11.1993, in pursuance of which sweater, blood stained white shirt, a pair of black shoes and eight pieces of bones were seized. On the memorandum of appellant-Namonarayan, the watch of the deceased was seized from his house. The seized bones were sent for autopsy to 100 Bed Hospital, Korba vide Ex.P.8(A). However, the bones along with sweater, shoes brought in a sealed packet were returned to the Constable and referred the same to Raipur Medical College for final opinion. The seized articles were placed for identification by Executive Magistrate S.K.Shrivastava P.W.8 and vide identification memo Ex.P.11 and Shiv Prasad P.W.9 and Akhilesh Shukla P.W.11 identified the articles seized, to be that of the deceased Subhash Chandra. In the process merg intimation Ex.P.13, on information of B.P.Mishra, S.H.O. Balco Nagar, was registered.

3. *Dehati Nalishi* Ex.P.14 was also registered, on the information given by B.P.Mishra P.W.12. Seized articles i.e. sweater, shirt, shoes etc. were sent for chemical examination to F.S.L. Bilaspur. Site plan was also prepared by the *Halka Patwari* Jhaduram Kaushik vide Ex.P.1.

4. After completing investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Korba against the appellants under Section 302 and 201 I.P.C. who in turn committed the case to the Court of Sessions Judge, Bilaspur and the same was received on transfer for trial by the learned Additional Sessions Judge. The learned Additional Sessions Judge framed charges under Section 302 & 201 I.P.C. against the appellants who abjured their guilt. The

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prosecution in order to establish the charges against the appellants examined 12 witnesses in all. Thereafter statement of accused was recorded. The appellants denied allegations levelled against them in the prosecution case and pleaded innocence and false implication. After hearing the public prosecutor and the counsel for the appellants-accused, the learned Additional Sessions Judge has convicted the appellants and sentenced them as above.

5. Learned counsel for the appellants submits that there is no evidence available on record to establish the death of the deceased Subhash Chandra Shukla as bones which have been allegedly recovered on the basis of memorandum of the appellant-Mohit Ram were sent for autopsy to Dr. Surjit Singh P.W.4 and from perusal of the statement of Dr. Surjit Singh, it is clear that the bones sent to him for autopsy were further referred by him to the Raipur Medical College, for examination and thereafter there is no report from the Raipur Medical College to show that the bones in question were in fact of human being much less that of the deceased-Subhash Chandra Shukla. She further argues that the conviction of the appellant is solely based on the testimony of P.W.5 Mangal Singh and P.W.6 Patiram who claimed themselves to be eye witnesses of the incident and on the alleged recovery of the bones, the sweater, shirt and shoes of the deceased. It is contended that the incident occurred on 18.12.1991, as per prosecution case and missing report was lodged on 7.1.1992 i.e. after almost 20 days and the statement of these witnesses was recorded on 30th October, 1993 i.e. more than two years after the incident. She further argues that the conduct of Mangal Singh P.W.5 and Patiram P.W.6 in not reporting the matter to the Police is highly unnatural, and therefore, the Court below was not

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justified in relying upon the evidence of these witnesses convicting the appellants on the basis of the same.

6. So far as memorandum of recovery is concerned, it is pointed out that in the missing report, the father of the deceased had described that at the time the deceased proceeded for Korba, he was putting on black coloured pant, discoloured shirt, white shoes and socks and having Rs.1100/- with him, on bicycle. But the recovery, on the basis of the memorandum is, apart from 9 bones, half sweater and black shoes and white shirt and therefore, the above seizure does not corroborate the missing report and it is highly improbable that after two years of the incident, shirt worn by the deceased would be intact and the same would be recovered.

7. On the other hand, learned Panel Lawyer, supports the impugned judgment.

8. We have heard the learned counsel for the parties and have perused the impugned judgment.

9. From the record, we find that there is no evidence to show that the bones recovered on the memorandum of the appellant-Mohit Ram in any way are of the deceased Subash Chandra as there is no medical evidence on record to connect the bones with the deceased Subhash. It is also not clear whether the bones belonged to the human being. If we consider this aspect, we are left only with statement of P.W.5 Mangal Singh and Patiram P.W.6 to reach the conclusion that on the date of incident i.e. 18.12.1991 the deceased was assaulted by the appellants in the forest, as a result of which, he died.

10. P.W.5 Mangal Singh has stated that some two years 5 months before the date of his examination in the Court one Shukla came to him at about 10 P.M. in the night and woke him and asked that he has purchased one cot from Namonarayan and it has to be taken to Balco

and he engaged me for this purpose for Rs.20/-. Apart from hiself, one Patiram was also engaged for the above purpose and thereafter he took them to the house of Namonarayan from where they took one cot each and and carried the same. Shukla was having bicycle. He was ahead of them and they were following him and were proceeding towards *swan nalah*. When they reached on the valley near *swan nalah* Namonarayan and Mohitram appeared from the bushes and started assaulting Shukla with *danda*. Shukla shouted for help whereupon accused Mohit Ram said who will save him and also said by taking *Mahua* liquor he insults his wife. Seeing the incident, he and Patiram left the cot there and fled away. On the following morning, Mohitram met him and threatened him not to disclose the incident and because of this threatening he did not disclose the incident. In the cross-examination, this witness stated that the place where the dead body was found, was some six miles (2 *Kos*) away from the place where the incident occurred, the body was that of Shukla was apparent. His hand, leg, back, stomach etc. were clearly identifiable. The deceased was putting on clothes, shoes, socks, sweater etc. He has further stated in paragraph 10 that the incident occurred at 10.00 P.M. He has admitted that the father and brother of the deceased had come to his village in search of their son. They had come thrice to search their son and also enquired from him and Patiram, upon which, he had expressed his ignorance regarding whereabouts of his son. He has further stated that father and brother of the deceased had asked that he along with Patiram had taken one cot each from the house of Namonarayan along with the deceased Shukla to go to Balco and since then the deceased is not traceable and in reply to this, they had denied. He has further stated that thereafter the Balco Police never called them and he and Patiram did not tell anything regarding the

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murder to the Police and the Police after arresting Mohitram had called them and recorded their statement and then on that date he narrated the incident for the first time before the Town Inspector.

11. Patiram P.W.6 has stated that at night at 12 '0' clock he had gone with Subhash Shukla to Mohitram and Namonarayan for purchase of two cots. He and Mangal Singh were engaged for Rs.20/- for carrying the cots upto the Balco. Thereafter, they proceeded to Balco carrying cots. Subhash Chandra Shukla was accompanying. When they reached near *Suvar* river, the appellants who were hiding in the forest came out and assaulted Subhash Shukla and after sometime Mohitram stated that he is dead. After hearing the same, he along with Mangal Singh fled from the spot leaving the two cots and in the morning the accused-persons came to him and threatened not to disclose the incident to anyone or else they will kill him. Out of this fear, he did not disclose the incident to anyone and for this reason Mangal also did not disclose the incident to anyone and on that day Subhash Shukla died. He has also stated that the pieces of bones were found two-three *Kos* (six to nine miles) away from the place where quarrel took place and they had stated that the bones belong to Subhash Shukla. He has also stated in paragraph 8 that father of the deceased came to them and enquired about his son to which he replied to the father of the deceased that out of fear he is not knowing anything and he has also informed that Mohitram had threatened him, therefore, I am saying that I don't know anything and he had stated about the incident on the very next day when the father and brother of deceased had visited to his village.

12. Thus, if we scrutinize the statement of these two witnesses, we have no hesitation in coming to the conclusion that these witnesses are not stating the true facts as they keep quiet for a considerable

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period of two years. They claimed that they stated the names of the appellants to the father and brother of the deceased, the very next day of the incident. One of them Mangalsingh stated that the body of the deceased was identifiable and he was putting on clothes which is falsified from the recovery of the bones and the statement of Dr. Surjit Singh P.W.4.

13. On the basis of aforesaid discussion, we are of the considered opinion that finding of the Court below that the prosecution has established its case against the appellants that they caused the death of deceased-Subhash Chandra Shukla is erroneous and the same is based on misappreciation of the evidence of the witnesses i.e. Mangal Singh P.W.5 and Patiram P.W.6. The glaring inconsistency present in the statements of these witnesses has been over looked. For these reasons no reliance could be placed on their statement.

14. In the result, the appeal preferred by the appellants succeeds. The impugned judgment of the learned Additional Sessions Judge convicting the appellants under Section 302 & 201 of the I.P.C. and sentencing them to undergo imprisonment for life and imprisonment for one year with fine is set aside and the appellants are acquitted of all charges. The appellants-Mohitram shall be set at liberty forthwith, if not required in any other case. Appellant No.2-Namonarayan is on bail and his bail bonds are cancelled.

Sd/-
Dhirendra Mishra
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani